

The South Leith Case of 1855

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The South Leith case was the trial of the Reverend Henry Duff, minister in the second charge at South Leith and clerk to the presbytery of Edinburgh, on a charge of libel, in the summer of 1855. There was enormous public interest in the case, and it was later remarked that the South Leith case, from first to last, filled over 200 columns of *The Scotsman*. The trial itself had its comical aspect for those not involved, as it was an attempt to find Duff guilty of writing a scurrilous lampoon, in which a number of prominent townsmen of Leith were ridiculed. But there was far more to the situation than could be touched on in the relevant evidence. The trial indeed was a climax — a dramatic climax — to a development which had been building up over a long period, and it was almost 20 years after the trial before the inevitable anticlimax was worked out. In view of this the “South Leith Case” might properly be a title given not to the trial before the presbytery but to the situation in which the congregation of South Leith parish church found itself between 1843 and 1873.

South Leith was never a collegiate charge. From 1593, the cure had been served by two ministers, but all that happened in that year was that the presytery of Edinburgh sanctioned the calling of a minister to a second charge there. David Lindsay had been the minister of South Leith since 1560, and remained in the charge until his death in 1613, despite all his other duties and interests. Lindsay was much involved with the business of the national Church, and was absent from his parish for extensive periods, as well as spending a year in prison at Blackness. In October 1589, he sailed with the king for Norway to officiate at the royal marriage to Princess Anne of Denmark. The extensive parish of South Leith must have been badly neglected during these absences. There was a period of four years from 1570 when John Durie served at Leith as a second minister, but Durie was then called to the High Kirk in Edinburgh. For the next 15 years, Leith had to put up with their minister's comings and goings. The trip to Norway kept Lindsay away all through the winter of 1589 and the spring of 1590, but on this occasion he had been able to engage an acceptable colleague in the Rev. James Logan, brother to Andrew Logan of Coatfield, one of the heritors in South Leith. Logan's precise standing in South Leith is not clear, but when he departed in April 1593 the presbytery accepted an offer by the incorporations of Leith to find the stipend for a second minister.

On this basis George Sempill was admitted to the second charge in October 1593.¹

This arrangement was not as novel in Leith as it might have been elsewhere. Members of the Leith incorporations were well aware that before 1560 their fathers had supported priests to serve at the chantry chapels of the various incorporations.² The new arrangement was that the kirk session would find one-fifth of the second minister's stipend, and the incorporations the remaining four-fifths. The population of the parish, and the way of life, did not change much during the next century and a half. During that period the incorporations built lofts in the church for their members, and later the kirk session provided pews. Seat rents became a steady source of income for both kirk session and incorporations, and it was in this way that the second stipend was produced. When the industrial revolution began to affect Leith in the mid-eighteenth century, the population began to increase rapidly. At that same period secession and schism resulted in the appearance of other denominations, creaming members away from the parish kirk. Both kirk session and incorporations found it increasingly hard to maintain their traditional discipline and influence, as many people were managing to live without either the church or the incorporations. Added to this, the cost of living rose, and the stipend of the second charge became quite inadequate. In 1805, the corporations agreed to raise the amount they paid to the second minister, who at that time was James Robertson, a popular personality. Robertson was succeeded in 1833 by David Thorburn, equally popular, and a Leither whose family were long-standing members of the congregation.

Then came the Disruption, when David Thorburn "went out" taking with him almost 400 members. Procedure in the vacancy was first to call a meeting of the patrons of the second charge. These consisted of four members from each of the four groups of incorporations, 15 delegates from the kirk session, the minister of the first charge, the provost, as judge admiral of Leith, and two magistrates. The patrons together decided on a suitable minister for the charge, whom they would recommend to the electors in the congregation. Past experience had shown that the selection of a presentee could take a long time and many meetings of the patrons. On this occasion, however, when the meeting of patrons was called, no one appeared from the Mariners, the Traffickers or the Trades, and only three delegates from the Maltmen attended. The meeting proceeded nevertheless, and it was agreed to recommend the Rev. Henry Duff to fill the vacancy. A meeting of electors was called for 2 January 1844.

1 Scottish Record Office (SRO), CH2/121/2, Edinburgh Presbytery Records, Oct., 1593.

2 See J. S. Marshall, "The Birth of a Parish Church", *ante*, xxi (1981), 67-77.

By this time South Leith had no minister at all. After the Disruption, there were numerous vacancies in parish kirks, and candidates were hard to find. South Leith was not unduly perturbed, for Dr Grant was still in the first charge, and it was felt there need be no great hurry over replacing David Thorburn. This unconcern was given a sudden jolt when in November Dr Grant announced his acceptance of a call to St Mary's, Edinburgh. At once the elders saw their situation in quite a different light. Leith was growing fast, with problems of poverty, overcrowding, disease and vice that presented an urgent challenge to a vigorous ministry — a situation unparalled in the past. In these circumstances, the kirk session and the maltmen thought themselves fortunate to be able to recommend Henry Duff for the second charge. This man had no previous experience in the ministry, but he did not lack other experience. Thirty-six years old, Duff was a man of strong personality who had the courage to give up an assured position as headmaster of the Glasgow Trades school, to study for the ministry. This could well be the answer to the pressing needs of South Leith.

When the meeting of electors convened on 2 January 1844, the three groups of incorporations who had ignored the patrons' meeting each sent a representative, and each of these handed in a written protest on behalf of their societies. The statements were separate, but each made the same points and offered the same reasons of protest. First, while the incorporations were entitled to concur in presenting a minister to the second charge at South Leith, there was no legal obligation on them to do so. Secondly, the Disruption had substantially reduced the membership of the congregation, which was now of a size that ought to be within the capability of one minister to serve. Thirdly, the funds of the incorporations, arising from the contributions of members, were needed to maintain their privileges, and to support their aged and sick members, and widows and orphans. They were not legally liable for any stipend. If a minister were appointed to the second charge, he ought to be paid by those who presented and elected him. Fourthly, if, despite this protest, the vacancy was filled, the protesters were prepared to contribute what their incorporations originally paid before the increase paid after 1805 to Dr Robertson, but that was the limit to which they were prepared to go.³ This was the state of feeling among those prominent members of the congregation when the new minister was ordained and inducted to the second charge in February 1844.

Henry Duff was a Fifer, born in Leslie; and after attending St Andrews and Edinburgh universities he became an English teacher, and while still in his twenties was appointed headmaster of the Glasgow Trades House School. He was always a man of

³ SRO, CH2/716/218, South Leith Kirk Session Records, 2 Jan., 1844.

very decided views, and it is a reasonable assumption that the heated controversy of the years preceding the Disruption stirred Duff to the extent that he began attending Divinity classes at Glasgow University, completing his studies just as the storm broke in May 1843.

On the day before Henry Duff's ordination it was announced that the queen had presented the Rev. William Stevenson of the Abbey Church, Arbroath, to the first charge of South Leith, so that from the beginning these two men knew they were to be colleagues. Stevenson's induction took place in May. Two years older than Henry Duff, Stevenson had been 11 years at Arbroath. He was a scholar, tall and thin, and of a retiring disposition. His manner could be forbidding, but he had many close friends in the academic world. His keen interest in antiquarian and archeological pursuits was stimulated by his association with Cosmo Innes, Joseph Robertson, David Laing and Walter Skene. Sir James Y. Simpson was a long-standing friend. When he came to Leith, Stevenson was in mourning over the loss of his wife, who had died a few months before, but in 1845 he married Mrs Webster, a widow, and daughter of a shipowner, Mr Duncan, a prominent member of South Leith congregation.

In June 1843, Duff had married Margaret Mather, daughter of a Glasgow merchant, and their first child, Mary, was born two months after their arrival in Leith. A contemporary described Henry Duff at that period as being "black-haired and whiskered . . . a little stout in appearance. A keen, piercing dark eye shaded by long lashes; a rather prominent nose, and features expressive at once of benevolence and independence." The two colleagues at South Leith were temperamentally unsuited to each other. At best their relationship was formal and correct, but it was always strained.

They soon settled in and worked well enough together, dividing the duties. They never shared in the same service: morning and evening worship was taken by one or other of the two ministers alternately. Duff was kept very busy: he took a service at Restalrig once a fortnight, and after the South Leith poorhouse opened in 1850 a service was conducted there on Sunday afternoons. There was a congregational Sunday School which met in rooms rented from Leith High School, but Duff was not involved there: instead, he had a Sunday School at Restalrig and another in the Broad Wynd for the children of the parish. There was also a weeknight service, and a prayer meeting at Restalrig, so that with all the other pastoral work Henry Duff had little spare time. In 1845, he also became clerk to the presbytery of Edinburgh, which involved him in extra-parochial responsibilities. He found himself obliged to employ an assistant. Student assistants were unpaid, but were given board and lodging.

at the manse. There was no manse attached to the second charge, but Duff had got himself a house at Summerfield, on the Restalrig Road, about halfway between Leith and Restalrig, which was an admirable situation, considering his duties at both Restalrig and Leith.

It was perhaps surprising that a minister so apparently busy as Henry Duff should have accepted the post of presbytery clerk, with the small stipend attached to it, but in the second charge he soon found himself in a false position. As a result of the protests made by the incorporations during the vacancy, Duff was being paid substantially less than his predecessors James Robertson and David Thorburn. He was back to the stipend level of the eighteenth century, and the incorporations appeared to have been right in judging they could not be legally forced to pay any more. Presumably Henry Duff had not been made aware of this when he accepted the call, for at that time of many vacancies in the Established Church and few candidates, Duff could have gone elsewhere. Here can be detected the beginning of the trouble that was soon to engulf the congregation. From the time of his ordination, Henry Duff had a grievance, and he was not the man to ignore it. To be fair, he realised that unless the matter was properly dealt with, and a reasonable stipend offered, the future of the second charge must be in jeopardy.

There were other complicating factors in the situation. For one thing, the days of the incorporations were numbered. This was common knowledge, but if the incorporations disappeared South Leith congregation would be materially affected. Income from seat rents paid the stipend of the second charge, but if the incorporations were to be abolished, something would have to be done to ensure that this income from the incorporations was not lost. The kirk session did the obvious thing and brought in all the seats owned by the corporations. The Burghs Trading Act became law in 1846, abolishing the old rights and privileges of the incorporations. Some of these bodies disappeared almost overnight; others lingered on in the guise of Friendly Societies. Some, like the Dock Porters, the Mariners, the Metters and Weighers, the Traffickers (or Merchant Company) continued to operate as societies, but bereft of the old monopolies.

Apart from all this, there was another even greater cause for anxiety. As far back as 1795, the kirk session had been warned that extensive repairs were needed to the church fabric, and the incorporations and heritors had argued interminably the question of liability. The bickering was interrupted in 1836 when Thomas Hamilton the architect announced that the church tower, leaning 24 degrees from the vertical, was about to collapse. Services were at once cancelled, and on the last day of September that year, to the general relief, the tower was safely dismantled. This did

nothing to settle the question of who would pay for the rebuilding of the church, but at last, in July 1846, almost simultaneously with the publication of the Burghs Trading Act, an act of parliament was obtained dealing with the several areas of change now being forced on the congregation.⁴

The heritors and incorporations had already spent a great deal of money in litigation to determine liability for the cost of rebuilding the church. The act now passed found the heritors liable, but only for the exterior structure. The whole project cost over £6,000, of which the heritors paid £3,500. The rest of the money was found by the trustees. The act had set up a body of trustees to handle congregational finance. This was simply the kirk session wearing another hat and keeping separate records, and the trustees were at once involved in finding the cost of all the interior alterations and repairs.

Thomas Hamilton, who had made the reports on the state of the building in 1836, was engaged for the work, and he soon presented a plan which provided for the complete reseating of the church. The side galleries which had belonged to various incorporations, were riddled with dry rot, and in a dangerous state. The old arrangement of seats had provided for 1,550 worshippers: the proposed rearrangement would accommodate approximately 1,200. From the first Duff vigorously opposed this plan. He offered various objections to the entire building programme, but it was soon clear that his opposition centred on one thing in particular, and that was the reduction in the seating.

It was an embarrassing situation for Henry Duff, as he was left alone to make his objections. On their part, the elders were appalled by opposition, at this late stage, to the rebuilding of the church. Most of them had spent all their lives knowing that the church must be rebuilt, and the new act of parliament had come as a relief, cutting short the interminable arguments of the last 10 years since the tower was so hurriedly dismantled. It was intolerable that this newcomer to the parish should try to stop the plans going through. Henry Duff did not care. He knew he was right. He pointed out that the stipend of the second charge came from seat rents and from no other source. A reduction of some 350 seats was plainly going to mean a considerable reduction in his possible stipend. Even as things were, he was receiving less than his two immediate predecessors in the charge, and since the Disruption the membership of the congregation had been

4 "An Act to provide for the Repair of the Parish Church of South Leith in the County of Edinburgh, and for the Administration of the Property and Revenue thereof, to alter the existing Mode of electing a Minister to the Second Charge of the said Church and Parish, to confirm the proceedings of the Heritors of the said Parish relating to the Purchase of a suitable House as a Manse, and to effect other Objects in connexion with the said Church and Parish." 9 & 10 Vict. Cap. ccxiv.

reduced. But the population of the parish was increasing, and as long as seats were available the stipend of the second charge would increase with a growing membership. To reduce the accommodation was a deliberate move to keep the stipend of the second charge at a low level. Apart from that, there was also the fact that while rebuilding was in progress the congregation would have to find another place of worship, and then there would be no income at all from seat rents.

The question of how to pay Duff during the alterations had not yet been considered. The kirk session were sympathetic. A committee was appointed to consider the matter and make recommendations. Their report, while making no suggestions as to where to find the money to pay Duff, is nonetheless interesting:

“The session are well aware that the stipend of the second charge is no more than £247, and that there is no source from which an Augmentation, whatever may be the change of times or circumstances, could be legally enforced. This amount is £46 less than what the late Dr Robertson received, and £31 less than was drawn by the immediate predecessor of Mr Duff . . . and the proposed allowance of £30 would do no more, therefore, than place our present minister upon a footing with the one who filled the charge immediately before him. It is but too obvious that after deducting the rent of a House, such as in these days a Clergyman is expected to live in — the local and Government taxes, and the Contribution to the Widows Fund, to say nothing of those many calls to which a Clergyman is exposed, and to which, as an example to his flock, he is obliged to respond, that by far too little remains from this small stipend to support, in these rather difficult times, a family in that comfort and independence in which we would all wish to see our Minister placed.”

Despite Henry Duff's strenuous opposition, the rebuilding went forward, while the congregation moved to St Thomas' church to worship. The arrangement was not quite on so fraternal a level as the simple statement might imply, for the kirk session of St Thomas' charged their guests for the privilege of this association. South Leith session, hard pressed for money at the time, were unable to pay the charges promptly. At the May term in 1850, two years after the reopening of the rebuilt church, the kirk session received a claim from Scott, minister of St Thomas', for the sum owing, with interest. Stevenson went to see Scott, who finally agreed to restrict the demand to £160, which presumably was the sum owed, without interest, or at least with reduced interest. South Leith then managed to pay.

During the rebuilding the trustees drew money from the bank

to pay Duff, and tried to collect seat rent from members then worshipping at St Thomas' to recoup this outlay. Relations between the two ministers in the reopened church became strained, for Duff had a continuing grievance, and Stevenson was a cold character. (He now became Dr Stevenson, on receiving a Doctorate in Divinity from Edinburgh University in 1849.) Duff then stopped attending session meetings. The ministers were supposed to moderate the kirk session alternately, but Henry now sent excuses, pleading business elsewhere as presbytery clerk, or indisposition, or some other engagement. After some months he no longer sent excuses. For a time he still attended in April and October, before the sacramental Sundays, when each minister was expected to present his own list of young people wishing to become communicant members of the church. The minister would report on each name, recommending approval of the application for membership, and the elders would add their own assessment of such cases as they were acquainted with before allowing that they should be given tokens for the forthcoming Communion. But Duff finally gave up even these attendances, merely sending his list of proposed new communicants to the session clerk.

The elders were deeply disturbed. Relations with Duff were worsening, and this could not be hidden from the congregation, who were taking sides. It was not to be denied that Duff had real cause for complaint, but for the time being nothing could be done about it. The work of rebuilding had been necessary — for safety, if for no other reason. The act of 1846 had fixed the stipend of the second charge at £247, to be paid from seat rents; and while this was not large, it was more than many ministers had. Henry Duff's continued absence from kirk session meetings constituted a serious failure to attend to the duties for which he was paid. Any kind of communication with him was now difficult, for even as a correspondent he was unpredictable, often ignoring urgent letters sent to him. Another source of annoyance was the lists of proposed first communicants he sent to the kirk session. Again and again he was remonstrated with for his non-attendance to report on these names. Some of the names on the lists were unknown to anyone else on the session, and others were only too well known as people quite unsuitable to be members of the church. When directly challenged on one occasion, Duff, far from acknowledging any fault, made it clear that he considered the kirk session had no right to question his lists — the business of the elders was simply to note the names and issue the tokens. The kirk session complained to the presbytery.

When the case came up, another minister was appointed to act as presbytery clerk, and Duff was asked what he had to say in answer to charges of giving communion tokens to people whom he had not examined, and of absenting himself regularly from kirk

session meetings. Henry provided an anticlimax by at once admitting his faults and promising to make amends in future. This abruptly closed the proceedings. Duff collected the presbytery minute book, took it home, and wrote up the account of his own trial.⁵

That was in March 1852. Within a few months the egregious Duff was involved in a new series of adventures at Restalrig, where he was a popular minister. There had been a long argument between the kirk session of South Leith, and a body at Restalrig known as the Society of Friendly Contributors, who had provided and maintained a school and schoolmaster in the village, and had also maintained the churchyard. The argument had been about ownership of the ruined church and churchyard, and this had finally been settled in 1834, when the church had been restored and made fit for worship. It now served as a mission or preaching station within the parish of South Leith, and the Society of Friendly Contributors became responsible for the management and running expenses of the building. Now Henry Duff, formerly a successful teacher in Glasgow, had a poor opinion of the school in Restalrig. Without consulting anyone he decided to set up his own school in the village. It was quite common then for ministers in smaller charges to teach classes during the week, or to take students as private pupils. Before long the minister's school was so successful that it ruined the village school. Duff had almost 60 pupils in regular attendance, while only five remained at the village school. Not surprisingly, Duff was soon very unpopular with the Society of Friendly Contributors, and especially with the two members of that Society who usually attended Restalrig church.⁶

Duff had also engaged a divinity student as assistant. Harry Robertson lodged with the Duffs at Summerfield, and taught in the Sunday schools at Restalrig and the Broad Wynd. Occasionally he also conducted the weeknight prayer meeting, and generally lent a hand about the parish. One Sunday, Robertson was in Restalrig church with the Duff family, sharing their pew. One of the members of the Restalrig Society approached the pew and ordered Robertson out. He and the Duffs were speechless with astonishment, and the order was repeated in a much louder voice. Duff was now in the pulpit waiting to begin the service, but the manager paid no heed, shouting that Robertson had not paid any seat rent and was not entitled to a seat. He then laid hands on the student and pulled

⁵ SRO, CH2/716/37, South Leith Kirk Session Records, 11 May 1852 quoting minute of Edinburgh Presbytery.

⁶ Information on Duff's success as a teacher at Restalrig is contained in a letter written on 17 Sept., 1853 by William Todd to his brother Adam, which was led in evidence at Henry Duff's trial for libel.

him into the aisle, whereupon the whole Duff family left the church — all, that is, except the Rev. Henry, who proceeded with the service. A fortnight later, when Duff next officiated, the two Restalrig managers usually in attendance prevented the Duffs from entering their pew. The service proceeded, but at the close there was a fierce argument in the church, with everyone shouting.

These extraordinary events appear to have been a deliberate attempt to provoke Henry Duff, and so bring to a head two separate issues that had arisen between him and the Friendly Society managers. One was the matter of the school. Duff had been at fault in setting up his school without any offer to discuss the matter with the Friendly Society, who had built and maintained the village school. Moreover, the minister had been using the church as a schoolroom, since no other place was available, and the church building belonged to the Society. The other source of trouble was James Kidd, the precentor, with whom Henry Duff had for long been dissatisfied. Kidd appears to have been a poor performer, unreliable, and reluctant to accept any orders from the minister. Henry Duff dismissed him after the second Sunday's disturbance in church, when Kidd had joined in the argument at the close of the service, insulting and abusing the minister. But the precentor was appointed and paid by the Restalrig Friendly Society, who resented Duff's high-handed methods. They now went to law, and applied to the Lord Ordinary for an interdict, which they got with no trouble. This prevented Duff from interfering with the precentor in the discharge of his duties, and also prevented the minister using the church for any other than religious purposes. This was in August 1853.

The Restalrig congregation was solidly behind the minister. To demonstrate their sympathy and support they subscribed and presented him with a piece of silver plate, making him a speech of thanks for his devoted work in the village. This was gratifying, but two facts portended serious consequences: one was that the managers did possess the rights they were asserting. It had taken four years of argument with South Leith kirk session, but the managers' rights in Restalrig church had been agreed before Henry Duff had arrived on the scene. The second fact was that Henry Duff was very angry indeed. He, his family, and Harry Robertson, the student, had been subjected to inexcusably humiliating treatment.

A few months before these events, Duff had met another divinity student — a very different type from Robertson. William Todd had started life as a shoemaker, but aspiring to the ministry he had managed to get enough education to allow him to attend Edinburgh University, where he was reading natural philosophy in preparation for a presbytery examination for admission to the

Divinity College. Todd was married, with two young children, and in very poor circumstances. He and his family, indeed, were verging on starvation. Henry Duff took pity on him and promised him work, for which he would be paid a modest salary. Todd also attended the church at Restalrig.

After receiving news of the interdict, Duff discovered that William Todd had a brother Adam, who was in business as a tile manufacturer at New Cumnock, where he had a local reputation as an amateur poet. This gave Henry Duff an idea. He wrote to Adam Todd asking whether he would care to try writing a satire in verse. Todd was interested, so Duff proposed that he should write a poem lampooning the various characters involved in obtaining the interdict against him. Adam was flattered, and readily agreed. His brother William, briefed by Henry Duff, sent him character sketches of the two Restalrig managers, James Kidd the precentor, various South Leith elders who had shown an interest in the business (not on Duff's side), and also an unflattering description of the Rev. Dr William Stevenson, Duff's colleague in the first charge. Stevenson had been anxiously pressing Duff to recognise and respect the rights of the Restalrig managers, but Henry was much too angry to listen.

In due course Adam Todd produced his satire, which Duff at once had printed in Leith and circulated. It caused a sensation. The various people satirised were furious, and a complaint was made to the presbytery. The poem, entitled "The Interdict" was assumed to be the work of Duff, and on this assumption he was charged with libel and summoned to stand trial before the presbytery. The accused strenuously denied the charge, and said he had nothing to do with the production of the poem — which was a lie. But Henry Duff had a curious theory on the morality of lying which he once explained to William Todd. If the consequence of telling the truth was to lead to more trouble, he thought, then lying was justifiable.

Duff's closest collaborator now turned against him. William Todd, the poor student he had befriended, had been a fervent admirer of the man to whom he owed so much; but Willie Todd was fond of a dram. His poverty-stricken state may have been at least partly due to this weakness. One evening, Todd, obviously the worse of drink, appeared at a meeting of Sunday-school teachers at Duff's manse. Duff at once gave orders to the maids that Willie Todd was never again to be admitted to the manse, and from that time Henry Duff refused to know Willie Todd any more. At first, Todd could not understand this, but when he realised the minister had really turned his back on him, he could not find anything bad enough to say about Henry Duff.

The trial before the presbytery lasted the better part of two months in the summer of 1855, with sessions on two or three days

each week. An immense amount of evidence was heard, but in the end the case petered out. The fact that Duff had suggested the idea of the poem to Adam Todd was not enough to pin the charge of libel on the presbytery clerk.⁷

Strictly speaking, that was the South Leith case. It caused a sensation, generated gossip, and directed the attention of the whole city on the affairs of South Leith parish church. As has been shown, a great deal more was wrong with Henry Duff and the South Leith congregation than the circumstances attending the publication of "The Interdict", and to understand the real South Leith case we must continue to follow Duff's career in Leith.

By the time he was on trial before the presbytery, Duff was already fighting on another front. His relationship with the kirk session had been worsening. It had taken two years for the events at Restalrig and the affair of "The Interdict" to come to trial, and in that time the matter had been widely discussed through the whole town of Leith. One serious result of this was a disastrous drop in seat rents, as many members left the congregation. When the trustees met in May 1854 they found themselves unable to pay Duff his full stipend, as the revenue from seat rents was more than £20 short of what was required for the half-year. Duff, of course, did not attend the trustees' meeting, so was not available for consultation. But he had made it known that he objected to the stipend being paid from any other source than seat rents. This was legally correct, but the trustees were willing to make up the deficit from a sinking fund — which was perhaps bending the law, but it would at least have met what they conceived to be their obligation to Duff. As he objected to this, the minister was only paid the sum available. And it may be supposed that it afforded Henry Duff a wry satisfaction to see his warning of the need for plenty seats and plenty seatholders finally justified, because from first to last it does not seem to have occurred to him that his own attitudes and judgment might be at fault.

Dr Stevenson found it increasingly hard to maintain a reasonable working relationship with his colleague. Once he had made up his mind on any subject, however trivial, Duff was immovable, and examples of his intransigence fill many pages of the kirk session records at this period. After the rebuilding of the church, a room in the tower, intended as a vestry, was unusable for a long time, owing to persistent damp. The ministers were therefore accommodated in the session room, but Duff paid no heed to this arrangement, and kept a large press or wardrobe in the tower room. After the dampness was sufficiently dried out the

7 All the details covered in the evidence were reported at length in *The Scotsman* and the *Edinburgh Evening Courant* while the trial lasted.

session wished to have the room decorated, and a letter was sent to Duff asking him to have his press removed to let the painting work go forward. Duff refused. The elders could see neither sense nor reason in this, and a long correspondence followed, as Duff never attended any meetings. At length, the session clerk received a letter informing him that if anyone laid hands on Duff's press to move it, Duff would at once take legal action — and he meant it. The kirk session decided to leave the room undecorated.

On another occasion, the presbytery called for a retiring collection on a particular Sunday for the schemes of the church. It happened that South Leith session had already arranged for a retiring collection on that day for their own purposes. Duff knew of this, as it had already been intimated in church. When the session met to consider the presbytery's request Duff made one of his rare appearances at the meeting. It was proposed to take the presbytery's collection on some other convenient Sunday, but Duff informed the meeting that if they did not cancel their own collection and collect for the schemes of the church on the day named by the presbytery, he would charge them all with disobedience and have them summoned before the presbytery. He got his way. On one October evening when the session were to meet to examine the lists of proposed new communicants, he arranged to take a weeknight service at Restalrig. As the session had objected to the minister's sending a list of new communicants without attending to speak to it, he wrote, on this occasion, to the session clerk directing him to call a special meeting of the session on another evening to deal with his list. Again, it was Henry Duff's duty to take the evening service once a fortnight, but on several occasions he failed to appear, although the service had been intimated. The intending worshippers had to be sent home again. It was this malicious, mischievous behaviour that kept relationships between Duff and the kirk session in a state of simmering annoyance.

Life at South Leith was a sore trial to Dr Stevenson. He was a scholar; his interests largely centred on the study, where he was already amassing what eventually became an immense library. He and his rumbustious colleague hardly spoke to each other. They were seldom in church at the same time, and their contacts were either by correspondence, or through some third party. It must have been with much relief that in September 1861 Dr Stevenson accepted presentation by the crown to the Chair of Ecclesiastical History at Edinburgh University. It was none the less a difficult decision. South Leith congregation was at a very low ebb. The trials and troubles with Henry Duff were common knowledge, and the subject of incessant gossip throughout the city and port. The kirk session was reduced to five elders, and the prospect of filling a vacancy in the first charge while Henry Duff remained in the

second charge must have seemed very dim.

Yet Henry Duff was perhaps more to be pitied than blamed. For several years he had not been paid anything like his full stipend. He ought to have received £123 10s 8d at each of the May and November terms, but since May 1854 he had never once been paid that amount, and with the continuing drop in seat rent revenue there were times when he was paid less than £20 for the half-year. The situation was one of immense difficulty for all concerned, and while Duff and the kirk session blamed each other, both sides were in fact the victims of circumstances. Four-fifths of the stipend of the second charge had been found by the incorporations, and while latterly these bodies had paid their share out of seat rents received for the pews they owned, this was merely a convenience for them. Had seat rents been insufficient to meet the stipend, the incorporations would have had to find the money from other resources. The Burghs Trading Act had taken away the rights and privileges of the incorporations, and while this was a crippling blow which changed the nature of these societies, it did not in itself destroy or abolish them. The smaller and poorer societies were finished; others saw no point in continuing; but the Mariners were still an important and influential body in the port, and the Traffickers, renamed the Merchant Company, counted for much in the business world. The Porters and the Metters and Weighers still carried on as in the past. Whether these continuing bodies should still be liable to pay stipend was not clear. The kirk session's purchase of the seats belonging to the incorporations was irrelevant to the question of liability. The Burghs Trading Act applied to the whole country, so it did not notice the matter of stipend, which was a concern only of the Leith incorporations. The act for rebuilding the church, on the other hand, had described the stipend of the second charge as being paid out of seat rents. This was a misunderstanding of the case, and the act, moreover, did not envisage that seat rents might be insufficient to pay the stipend. Duff decided to raise an action against the Merchant Company, and the incorporation of Mariners to determine their continuing liability for the payment of Stipend, and he won his case in the Court of Session. The incorporations appealed to the House of Lords, and in March 1865 the Lords reversed that judgment, holding that the act was a final compromise, and relieved the incorporations of liability for stipend in future.

By then, the vacancy in the first charge had been filled, but not without difficulty. The problems encountered in the vacancy were seen by the public as a recrudescence of the South Leith case — now referred to in the press as “the scandalous South Leith case”. At a meeting of Edinburgh presbytery on Christmas Day 1861 a presentation by the crown in favour of the Rev. Kenneth

Phin of Galashiels to be first minister of the church and parish of South Leith was laid on the table. As there was some inaccuracy and irregularity about the phrasing in the presentation document, the matter was postponed until the January meeting of presbytery. In January, the presentation was sustained by 24 votes to four. The presbytery clerk, Henry Duff, dissented and protested for leave to complain to the synod. Phin was appointed to preach at the morning service in South Leith church on Sunday, 9 February, and at the afternoon service the following Sunday. The presbytery proposed to moderate in the call on Thursday 27, and Duff was appointed to serve the edict to that effect.

It would be tedious to describe the many intricate objections and manoeuvres deployed by Duff and those siding with him. The notable fact is that many members of the congregation did support Duff. At his own request, he was relieved of the duties of presbytery clerk until a settlement should be reached. The call to Phin was originally signed by 65 heritors, elders, members of the congregation, and parishioners being Protestants — men only, of course. By 7 March, the total had increased to 320 signatures. There was, in fact, a massive majority against Phin. This unfortunate man had apparently been quite acceptable in Galashiels, but the South Leith objectors claimed he neither understood nor was able to expound the scriptures: his manner was harsh, affected and dictatorial; he was “without unction, and fails entirely in reaching or making any impression on the heart”. Both his matter and manner were unedifying; his prayers “consisted to a large extent of passages of Scripture strung together without aim or connection, and are uttered in an indifferent and presumptuous tone”.⁸ There was more, but it all added up to the fact that the protesters did not care for Phin, and would not have him as their minister. Adherents of the Free Kirk and U.P. congregation in Leith must have heard all this smiling. Here was still another presentation gone wrong. Phin saved the situation by withdrawing his acceptance of the presentation, and the moderator of presbytery intimated to the Home Secretary that the first charge of South Leith was still vacant.

The congregation was now notorious, over a wide area, as intransigent and quarrelsome to a shocking degree. For about 12 years past the only news to come from South Leith had been of trouble and bad feeling. Whoever accepted a presentation there would have to be insensitive, or foolish, or else a dominant, confident leader who also knew how to use tact and persuasion. In the jargon of a century later, he would have to be a man with charisma. In June 1862, the Rev. James Mitchell of Peterhead accepted the presentation. He did so reluctantly, after much pressing by influential churchmen who saw him as a young man

⁸ All this was reported at length in the press.

with the gifts for this difficult, challenging ministry. He made a condition that the call must be signed by at least 1,000, and also that he should be allowed to demit if the opposition became too great. Despite continuing objections by Duff and some others, Mitchell preached at both morning and afternoon services on two successive Sundays in July.

The first of these Sundays was long remembered in Leith. In view of all that had gone before, excitement was at fever pitch, and the church was packed long before the morning service was due to begin. Young Mitchell shouldered his way through the crowd and into the pulpit with some difficulty, and after the benediction the congregation sat down again and remained seated, so as to be sure of a place at the afternoon service. Mitchell managed to reach the vestry, but had to stay there until the time for the second service. By 4 August the call had been signed by 1,682, and no objections had been offered.

Henry Duff had not given up: he raised an action of declarator in the Court of Session to have the presentation to South Leith declared null and void. The argument was that as the vacancy had now lasted more than six months, the crown's right to make a presentation had lapsed, and it was the duty of the presbytery to fill the vacancy. In view of this action before the Court of Session, the presbytery sisted procedure in the vacancy, and awaited the judgment of the Court. It was not until January 1864 that the Lords of Session decided against Duff, who became liable for the expenses of the case.

While all parties waited with what patience they could command to fill the vacancy, Henry Duff engaged in yet another joust with the kirk session. From the pulpit he took the elders to task for their behaviour in a matter which had been discussed in the session, and which the elders considered confidential. This brought him a rebuke from presbytery. As the erring minister was still presbytery clerk, these repeated charges against him were embarrassing, and now the presbytery appointed a committee to go to South Leith to try to ascertain the origin of all the troubles there, and to make peace. This committee reported in March 1864, just three days before the induction of the new minister. The report recognised Duff's unenviable situation, in receiving much less than his proper stipend; but his irritation had led him to many unjust judgments and ridiculous suspicions of his elders. On the other hand, the kirk session were much to blame for their lack of sympathy and understanding for a man under great stress. Over many years the tragic situation had developed in which Duff never attended session meetings except when absolutely necessary, and the elders, now reduced to four, never attended church when Duff was officiating. In view of Mitchell's impending induction it was hoped that a new spirit of understanding and peace would

prevail. Henry Duff, having failed to prevent the induction, decided not to pursue the matter in any higher court. This was prudent, as he still had to find the expenses for his action before the Court of Session.

During the years of dissension, when so many members had left the church, and seat rents had been falling off, the roll of communicants had been neglected, and was now in a state of confusion. Under direction from the presbytery, about 5,000 names were removed from the roll during the vacancy, leaving the membership at 1,200, and the presbytery recommended further pruning. In the thriving community of Leith, however, there was obviously great potential for growth under an energetic acceptable minister, and the fact that the call had been signed by over 1,600 members and adherents must have given the new minister much encouragement.

As soon as Mitchell was settled, and something of his character and personality began to be appreciated, there was a reversal in the trend away from the church. Seat rent revenue was soon increasing, and by the November term of 1865 it became possible to pay Henry Duff his full half-year's stipend for the first time in 11 years. But at that point, the session clerk received an arrestment order against Henry Duff and Alexander Latta, who had been his agent in the recent court action. The account for expenses had not yet been paid, and Duff and Latta were accordingly in debt for £600. Somehow or other this sum was found, for Duff received his full stipend from May 1866.

Undaunted by his lack of success at court in suing the Mariners and the Merchant Company for his unpaid stipend, and, again, in attempting to stop Mitchell's presentation to the first charge, Duff went to law once more in 1871. This time his action was against the trustees for the payment of £2,046 9s 4d arrears of stipend; and this time he was successful. In November of that year, the Lord Ordinary issued judgment in Duff's favour, finding him entitled to £1,872 1s 6d, of which sum £662 9s 3d represented interest on what had been owing him over the years. But the poor man did not long enjoy his triumph, for he died in June 1872.

His funeral was a great local event. He had latterly removed from Summerfield to Constitution Street, to a house adjoining the churchyard. Great crowds assembled, and the body was laid to rest in the churchyard beside that of his predecessor, Dr Robert Dickson. At the memorial services next day tributes were paid to this renowned character of Leith. Mitchell at the afternoon service said:⁹

“With sorrow and suffering of every kind he had the keenest

⁹ *Leith Burghs Pilot*, 22 June 1872.

sympathy, and stern though he often was at other times, yet in the chamber of sickness, or by the bed of death, or in speaking to the bereaved, he was gentle as a little child. Whatever recent estrangements may have separated any of you from him, I am certain that almost all of you who have come in contact with him must have experienced his sympathy and friendly counsel when sickness or death entered your homes. . . . I do not believe he ever once visited one family because rich, or passed by another because poor. . . .”

It was now clear to the kirk session that the second charge had become an anachronism. This was not because there was any less need for a second minister, but the basis for the payment of a second stipend was no longer secure. With the incorporations almost all gone, and no longer liable for stipend, it was plain that seat rents alone were too insecure and fluctuating to provide an adequate source from which to pay a second minister. Had this issue been recognised when the church was rebuilt, and a clear decision then made, the years of controversy and acrimony known to the public as the South Leith case would have been very different. There is plenty evidence to show that Henry Duff was a likeable man, a popular minister and devoted pastor, until the problem of how to pay his stipend clouded every matter he had to deal with, and poisoned his relationships with all kinds of people. Instead of staying to fight for what he deemed was a matter concerning all his successors in the second charge, he might have sought another parish in 1846, and the second charge at South Leith might have ended there and then. But Duff was pertinacious and the consequences were dire.

Instead of filling the vacancy after Duff's death, therefore, another act of parliament was sought, to bring the second charge to an end. This measure was published on 21 July 1873: “An Act to provide for the discontinuance of the appointment of a minister to the second charge of the church and parish of South Leith in the county of Edinburgh: and for other purposes relating to the said church and parish.” The act provided that in place of supporting a second minister, South Leith church should contribute to church extension within the parish by paying to the presbytery of Edinburgh the sum of £3,458 17s 6d.